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9
10 **UNITED STATES DISTRICT COURT**
11 **DISTRICT OF NEVADA**

12 * * *

13 LUCERO SANCHEZ,

14 Plaintiff,

15 vs.

Case No. 3:21-cv-00352-MMD-CSD

16 RENOWN HEALTH, a Nevada Non-Profit
17 Corporation, and DOES 1-20, inclusive,

18 Defendant.

**PLAINTIFF'S RESPONSE IN
OPPOSITION TO MOTION FOR
RECONSIDERATION [ECF No. 83]**

19 _____ /
20
21 COMES NOW, Plaintiff Lucero Sanchez (hereinafter "Sanchez" or "Plaintiff")
22 by and through the undersigned counsel, and hereby files the following Response
23 in Opposition to the Motion for Reconsideration [ECF #83] filed by Defendant
24 RENOWN HEALTH, a Nevada Non-Profit Corporation on March 13, 2024,
25 challenging the Court's Order denying summary judgment in favor of Renown on
26 Plaintiff's Title VII retaliation claim [ECF No. 81].

27 **MEMORANDUM OF POINTS AND AUTHORITIES**

28 ***a. Renown's Motion***

In its Motion, Renown argues that the Court's denial of summary judgment was based on the pretext analysis, with the Court stating that Plaintiff only needed to present "very little evidence of pretext" to survive summary judgment. Renown argues

1 that the Court misinterpreted the standard for establishing pretext and that Plaintiff
2 failed to present sufficient evidence to support her retaliation claim.

3 Renown also argues that it presented undisputed facts in their motion
4 supporting the decline in catering events at South Meadows, the transfer of
5 administrative duties to management, and Plaintiff's admission that she had already
6 been fulfilling cashier duties prior to her formal transfer. Renown argues that Plaintiff
7 failed to present any evidence to dispute the material facts presented by Defendant
8 or to establish a causal link between her protected activity and her demotion.

9 LR 59-1 governs motions for reconsideration. Such motions are disfavored and
10 must state with particularity any points of law or fact the court overlooked or
11 misunderstood, as well as any newly discovered evidence or changes in legal/factual
12 circumstances warranting relief. Reconsideration is only appropriate if there is new
13 evidence unavailable earlier, the court committed a clear error or the initial decision
14 was manifestly unjust, or there is an intervening change in controlling law. Motions
15 cannot simply repeat prior arguments. Renown's Motion plainly violates LR 59-1 as
16 it is nothing more than a re-argument of its prior Motion for Summary Judgment and
17 an invitation to the Court to invade the provenance of the jury and to reweigh genuine
18 issues of fact it already decided in its Order denying Renown's Motion for Summary
19 Judgment.

20 ***b. Standard of Review***

21 The Seventh Amendment of the U.S. Constitution prohibits the denial of the
22 right to a jury trial. Juries, rather than judges, determine the outcome of factual
23 disagreements. FRCP 56 permits summary judgment only where there is no genuine
24 dispute as to any material fact and the movant is entitled to judgment as a matter of
25 law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). When the evidence
26 is of a nature that a reasonable jury could potentially reach a decision in favor of the
27 party not seeking summary judgment, there exists a bona fide factual dispute. *Sierra*
28 *Medical Services Alliance v. Kent*, 883 F.3d 1216, 1222 (9th Cir. 2018) (quoting

1 *Anderson*, 477 U.S. at 248). In deciding a summary judgment motion, the evidence
 2 must be construed “in the light most favorable to the opposing party,” and the court
 3 must also “draw inferences in favor of the nonmovant.” *Tolan v. Cotton*, 134 S. Ct.
 4 1861, 1866 (2014); accord. *Holley v. Techtronic Indus. N. Am.*, 812 F. App’x 517, 517
 5 (9th Cir. 2020). In a motion for summary judgment, all reasonable factual inferences
 6 must be construed in favor of the party opposing the motion. This includes considering
 7 both direct and circumstantial evidence. *Coghlan v. Am. Seafoods Co. LLC.*, 413 F.3d
 8 1090, 1095 (9th Cir. 2005); cf. *Baker v. Roman Catholic Archdiocese*, 725 F. App’x
 9 531, 532 (9th Cir. 2018) (failure to “properly consider various pieces of circumstantial
 10 evidence” warrants reversal).

11 In order to prevail on her Title VII retaliation claim, Sanchez must show: (1) she
 12 participated in an activity protected under Federal law, that is complained about the
 13 discrimination she faced; (2) that Renown subjected the Sanchez to an adverse
 14 employment action, and (3) that Sanchez was subjected to the adverse employment
 15 action because of her participation in a protected activity. See *Hutton v. Elf Atochem*
 16 *N. Am., Inc.*, 273 F.3d 884, 891 (9th Cir. 2001). *Yartzoff v. Thomas*, 809 F.2d 1371,
 17 1375 (9th Cir. 1987).

18 As pointed out by the Court in its Order at ECF No. 81, citing *Villiarimo v. Aloha*
 19 *Island Air, Inc.*, 281 F.3d 1054, 1064 (9th Cir. 2002) to establish a prima facie case of
 20 retaliation, a Plaintiff must demonstrate that: (1) the plaintiff participated in an activity
 21 protected by law; (2) she suffered an adverse employment action; and (3) there is a
 22 causal connection between the protected activity and the adverse action.
 23 Subsequently, the burden of production shifts to the employer to articulate legitimate,
 24 non-retaliatory reasons for the adverse employment decision. If the employer meets
 25 this burden, the plaintiff must then show a genuine issue of material fact that the
 26 employer’s stated reason is merely a facade for retaliation. *Stegall v. Citadel Broad.*
 27 *Co.*, 350 F.3d 1061, 1066 (9th Cir. 2003), as amended (Jan. 6, 2004). The Court also
 28

1 noted, citing *Stegall*, that Plaintiff is only required to present "very little" evidence of
 2 pretext:

3 Moreover, "we require very little evidence to survive summary judgment
 4 precisely because the ultimate question is one that can only be resolved
 5 through a 'searching inquiry' -- one that is most appropriately conducted
 6 by a factfinder, upon a full record." *Id.* We have often stated that,
 7 because motivations are difficult to ascertain, such an inquiry should be
 8 left to the trier of fact: "An employer's true motive in an employment
 decision is rarely easy to discern. As we have previously noted, 'without
 a searching inquiry into these motives, those [acting for impermissible
 motives] could easily mask their behavior behind a complex web of post
 hoc rationalizations"

9 *Stegall v. Citadel Broad. Co.* at 1072-73 (9th Cir. 2003)(citations omitted).

10 The record before the Court includes the following evidence:

- 11 • Julie Macaluso, who worked as a Nutrition Representative at all relevant
 12 times with Sanchez when Sanchez was FNS Coordinator (ECF #77-3 at
 13 7:9), testified that she agreed that Sanchez's job before her demotion
 14 was "administrative." *Id.* at 9:20.
- 15 • Sanchez also testified that her position as FNS Coordinator before her
 16 demotion was mostly administrative. ECF #77-1 at 258:20.
- 17 • Sanchez also testified at her deposition that after her demotion, she was
 18 still doing catering and that her job duties did not change. ECF #77-1 at
 19 258:10:

20
 21 Q · · Okay · And your job title changed as well; is that
 correct?

22 A · · Yes.

23 Q · · Okay · Did your duties at work change?

24 A · · No.

25 Q · · Okay · Can you describe what you mean by that?

26 A · · So when I came back from when I had surgery, I
 27 came back, I was cashiering · I was doing catering.
 28 Basically, everything minus the paperwork and the
 deposits, did not do that.

- 1 • In October 2014, during a meeting about event planning at which the
2 Plaintiff was present, the Plaintiff's immediate boss, Christina Vargas,
3 said, "I hate fucking Mexicans" in front of FNS Manager Justin Bart, who
4 found it amusing. ECF #77-4.
- 5 • German Pineda testified that Vargas called Sanchez lazy. See ECF #77-
6 7 at 74:6.
- 7 • Pineda testified that he was told by Vargas to refrain from hiring
8 Hispanics because, "She said Hispanics too lazy." ECF #77-7 at 53:11.
- 9 • Mr. Pineda also testified that he witnessed an incident where Vargas,
10 when visiting the kitchen at Renown, threw a radio playing Hispanic
11 music into the garbage: ECF #77-7 at 75:10.
- 12 • Susan Oetjen testified that she received a complaint from Sanchez about
13 Vargas. ECF #77-6 at 15:14.
- 14 • Oetjen testified that she could not recall whether Sanchez described any
15 physical contact between her and Sanchez and did not recall whether
16 Sanchez told her she felt intimidated by Vargas. ECF #77-6 at 16:12.
- 17 • Ms. Sanchez's complaint to Ms. Oetjen described above, was made in
18 late in 2015 about an incident where Ms. Sanchez was assaulted by
19 Vargas, ECF #77-6 at 15:14
- 20 • At her deposition, Sanchez described Vargas physically "poking" her
21 hand (ECF #77-1 at 243:4 and 130:13).
- 22 • Sanchez asserted that she informed Oetjen of the incident, which Oetjen
23 confirmed: ECF #77-6 at 16:8.
- 24 • The record does not contain any evidence to suggest that Oetjen acted
25 on Sanchez's complaint, despite Renown's being aware of Vargas's
26 severe discriminatory remark about Mexicans in 2014. ECF #77-1 at
27 243:4 and 130:13
- 28

- 1 • In June of 2016, Sanchez was removed from the office she had used at
2 Renown in carrying out her FNS Coordinator duties for years. ECF #77-
3 1 at 130:18.
- 4 • On July 26, 2016, Sanchez tripped over cables, resulting in serious
5 injuries to both of her knees, and reported the accident on the following
6 day, July 27, 2016, as indicated on the C-4 form that Sanchez filled out
7 herself. ECF #77-8.
- 8 • Following her injury in July 2016, Sanchez was effectively employed as
9 a cashier. This cashier role was physically demanding and required her
10 to stock heavy items such as cases of drinks, large boxes, cans, and
11 various other merchandise. See ECF #77-1 at 187.
- 12 • On December 30, 2016, Sanchez's job title was formally changed to
13 Food Service Cashier. ECF #77-17 records the change in Sanchez's
14 position from FNS Coordinator, where she earned \$16.95 per hour, to
15 FNS Services Cashier with a reduced hourly wage of \$14.48, effective
16 December 29, 2016. ECF # 77-17 does not indicate the reason for the
17 demotion, other than: "change in title due to alignment of duties being
18 performed by employee." Under Section D, "Change of Status," no box
19 explaining the demotion was entered. *Id.*
- 20 • ECF #77-17 The document was prepared by Jessi Russell (who has
21 since changed her last name to Cohen) and was authorized by Susan
22 Oetjen. Vargas is also listed on the document as the second supervisor
23 of Sanchez. As indicated therein, on January 16, 2017, Sanchez's pay
24 was adjusted to the lower rate of \$14.48 per hour.
- 25 • After reviewing several emails between Jessi Russell and Christina
26 Vargas related to "reclassifying" Sanchez as a Cashier, Workers
27 Compensation Manager at Renown Shawn LeVac testified that she was
28

not included in the discussion about whether Sanchez was to be demoted. ECF #77-18 at 36:1.

- Although Renown has denied being aware of Vargas's bias against Mexicans, a claim not addressed in the Confidential Investigation Report ECF #77-22, it provided "Investigation documents regarding Christina Vargas" as ECF #77-23.
- Within these documents in ECF #77-23, there is a recorded interview with Renown employee Kathy West by Renown HR from August 28th 2014. In this interview, West recounts that Vargas expressed to another Renown employee, "I hate Mexicans." See RENOWN008104 in ECF #77-23.
- Moreover, evidence from ECF #77-23 at RENOWN 008140 confirms that Renown has long been informed of serious issues concerning Vargas, including specific comments expressing hostility towards Mexicans as reported by West.
- Also included in ECF #77-23 at RENOWN008142, is a Notice of Corrective Action for Christina Vargas, dated May 25, 2017, and authored by Jessi Russell. It reiterates many of the concerns, such as her intimidating approach, direct confrontations, and inappropriate language. The document in ECF #77-23 at RENOWN008142 concludes that, based on feedback and her failure to make necessary changes, Vargas' employment was to be terminated effective immediately.

In its Order denying Renown's Motion at ECRF #81, the Court correctly concluded that: (1) Sanchez's report about the poking incident was a report about harassment based on her national origin; (2) Sanchez's report could be causally linked to her complaints about Vargas's behavior to Oetjen, as the demotion occurred subsequent to her complaint. The Court noted that this connection is further supported by the fact that Sanchez typically received positive performance evaluations, provided

1 at ECF #77-2, despite the amount of time that elapsed between the complaint and the
2 demotion. The Court specifically noted in its Order at ECF #81 at 14, Sanchez noted
3 in her diary that she continued to be called the 'catering coordinator' and was tasked
4 with catering duties in 2017, ECF No. 69-17, page 12. And that this occurred after she
5 was demoted and had her pay cut at the end of 2016, See ECF No. 77-17, page 2.

6 Renown cites *McGinest v. GTE Serv. Corp.*, 360 F.3d 1103, 1124-1125 (9th
7 Cir. 2004), a case involving an alleged failure to promote on account of retaliation in
8 support of its Motion. Renown argues that Plaintiff's demotion occurred eighteen
9 months after her protected activity which, Renown claims, is not sufficient to establish
10 causation. However, the ruling expressed *McGinest* applies in cases when a
11 substantial gap between two events discounts a causal link, especially when no
12 additional supporting evidence is provided, citing *Villiarimo v. Aloha Island Air, Inc.*,
13 281 F.3d 1054, 1065). Here, Sanchez cites a litany of additional evidence. In
14 *McGinest*, the 9th Circuit dismissed a retaliation claim because McGinest was unable
15 to produce sufficient evidence that the stated reason for failing to promote him was a
16 pretext.

17 To prevail, Sanchez needed only to demonstrate her participation in a protected
18 activity, an adverse employment action by Renown, and a causal connection between
19 the two. As the Court noted in its Order at ECF No. 81, and drawing upon *Villiarimo v.*
20 *Aloha Island Air, Inc.* and *Stegall v. Citadel Broad. Co.*, only minimal evidence is
21 required to show pretext on the part of the employer.

22 The evidence includes testimony from Julie Macaluso and Sanchez herself,
23 confirming that her pre-demotion role was primarily administrative (ECF #77-3 at 7:9
24 and ECF #77-1 at 258:20). In 2014, Vargas made a discriminatory remark in the
25 presence of Sanchez and others (ECF #77-4). German Pineda's testimony detailed
26 Vargas's derogatory comments towards Hispanics and her inappropriate behavior
27 (ECF #77-7 at 53:11 and 75:10). Susan Oetjen's testimony confirmed receiving a
28 complaint from Sanchez regarding Vargas (ECF #77-6 at 15:14), while the incident of

1 physical "poking" reported by Sanchez to Oetjen is supported by Sanchez's deposition
2 (ECF #77-1 at 243:4 and 130:13).

3 Furthermore, the significant change in Sanchez's work conditions, including the
4 removal of her office and her subsequent demotion and pay cut (ECF #77-17 and
5 ECF #77-1 at 130:18), without evidence of Oetjen's action upon Sanchez's complaint,
6 points to retaliation by Vargas. Levac's testimony about emails about reclassifying
7 Sanchez's position (ECF #77-18 at 36:1) and the investigation documents regarding
8 Christina Vargas (ECF #77-23), which included West's testimony about Vargas's
9 expression of hatred towards Mexicans (ECF #77-23 at RENOWN008104) as early
10 as 2014, corroborate Sanchez's claim that Vargas demotion and cutting Sanchez's
11 pay was retaliatory, not simply a result of a lack of catering events at Renown South
12 Meadows. While Renown claims that the number of catering events declined
13 significantly, and administrative-type duties previously performed by Plaintiff were
14 assigned to management, it never provided evidence why this occurred and why
15 Renown felt compelled to cut Sanchez's pay and demote her, despite her many years
16 of service to Renown.

17 The Court's conclusion that Sanchez's report about the poking incident and
18 other complaints could be causally linked to the adverse actions taken by Renown is
19 well supported by the evidence (ECF No. 81). Even after her demotion, Sanchez was
20 still referred to as the 'catering coordinator' and tasked with associated duties (ECF
21 No. 69-17 at 12 and ECF No. 77-17 at 2), which shows that the demotion was been
22 in name and pay only, a pretext for retaliation.

23 WHEREFORE, Reconsideration of the Court's Order denying Renown's Motion
24 Summary Judgment under Local Rule 59-1 is not warranted, as Renown's Motion
25 simply demonstrates that it disagrees with the Court's determinations as to the
26 meaning and weight of the evidence, not that the Court overlooked or misunderstood
27 the law or the facts. The Plaintiff requests that the Defendant's motion be denied.

28 ///

1 RESPECTFULLY SUBMITTED this Friday, April 12, 2024

2
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CERTIFICATE OF SERVICE

Pursuant to FRCP 5(b), I certify that on the date shown below, I caused service to be completed of a true and correct copy of the foregoing document by:

_____ personally delivering;
_____ delivery via Reno/Carson Messenger Service;
_____ sending via Federal Express (or other overnight delivery service);
_____ depositing for mailing in the U.S. mail, with sufficient postage affixed thereto; or,
 x delivery via electronic means (fax, eflex, NEF, etc.) to:

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